

APPROVED 10/15/03

**TOWN OF WESTFORD**

**ZONING BOARD OF APPEALS**

**MINUTES**

**DATE:** August 20, 2003

**TIME:** 7:37 P.M.

**PLACE:** Westford Academy Lecture Hall

**PRESENT:** Sam Frank, Ron Johnson, Dave Earl, Roger Hall,  
Jim Kazeniac, Bob Herrmann

**ABSENT:** Jay Enis

**OTHERS**

**PRESENT:** Jennifer Burke-Permitting Office Manager  
Ellen Doucette-Town Counsel, Audience Members

**VARIANCE – 126 NO. MAIN STREET – CONTINUED FROM JULY 23, 2003 MEETING**

*Seeking a Variance from Section 3.6 Nonconforming Uses and Structures and Appendix C Table of Dimensional and Density Regulations to allow the construction of a farmer's porch within the front yard setback in a Residential A district, Assessor's Map 24, Parcel 20, James M. Joncas*

James Joncas was present and showed a drawing of the porch which will increase by 2 feet (from 4 feet to 6 feet) with a 21 ft. setback. Joncas stated that the setback measurements were taken from a certified plot plan. There was no input from the floor. It was moved by Johnson, seconded by Kazeniac, and VOTED 6 IN FAVOR WITH 1 ABSENT (Enis), to close the public hearing. It was moved by Johnson, seconded by Hall, and VOTED 5 IN FAVOR WITH 1 NOT VOTING (Kazeniac) and 1 ABSENT (Enis), to approve the Variance requested to allow Mr. Joncas to build a farmer's porch to come no closer than 20 feet to the right-of-way, per the plans submitted.

## **REORGANIZATION OF THE BOARD**

**CHAIRMAN** – It was moved by Johnson, seconded by Kazeniac, and VOTED 5 IN FAVOR WITH 1 ABSTAINING (Frank) and 1 ABSENT (Enis), to elect **Sam Frank as Chairman**.

**VICE CHAIRMAN** – It was moved by Herrmann, seconded by Kazeniac, and VOTED 5 IN FAVOR WITH 1 ABSTAINING (Johnson) and 1 ABSENT (Enis), to elect **Ron Johnson as Vice Chairman**.

**CLERK** – It was moved Johnson, seconded by Herrmann, and VOTED 5 IN FAVOR WITH 1 ABSTAINING (Hall) and 1 ABSENT (Enis), to elect **Roger Hall as Clerk**.

## **JIM SILVA, BOARD OF SELECTMEN**

**Chapter 40B Projects** - Silva suggested that the Zoning Board write a letter to him requesting what is needed from the Board of Selectmen to help ease the burden of the Chapter 40B projects. Silva would then present the Zoning Board's letter to the Selectmen and possibly arrange some type of coordination between the various Town boards involved with Chapter 40B projects. The Board agreed that communication between the Boards and neighborhoods is very important.

**Affordable Housing Plan** – Silva reported that the Affordable Housing Committee has hired John Ryan, a consultant, to develop an affordable housing plan. Silva stated that an affordable housing plan would assist in arranging for affordable housing in order for Westford to reach its 10% goal making Westford better able to deal with Chapter 40B projects on its own terms. The affordable housing plan process will begin in September. Burke reported that the plan will be completed by January 1, 2004 and submitted to the State thereafter according to the contract with the consultant.

## **FALL TOWN MEETING – Scheduled for November 4, 2003**

Frank stated that there is an opportunity for zoning changes. The Master Plan Implementation Committee might be putting something forward that says the Zoning Board should not grant Use Variances for uses that are not listed in the Use Tables. Frank asked the Board to provide him with any recommendations for revisions to the Zoning Bylaw.

## **137 CONCORD ROAD — CONCORD PLACE, LLC - COMPREHENSIVE PERMIT**

### ***Presentation of Plans & Discussion of Any Changes Based on Comments Received***

Attorney Douglas Deschenes was present for the applicant. Deschenes reminded the Board that the applicant had been before the Board several weeks ago to present conceptual plans and to receive comments from the Board. After that meeting, the applicant designed the current proposed plan. Deschenes outlined the site plan for a 10-

unit project (originally 16 units) which would consist of a 3-unit building in the front of the site (approximately in the location of the existing house), another 3-unit building and a 4-unit building. Deschenes pointed out the location of the septic systems, the proposed recreation area, and the infiltration system. Deschenes proposed removing the existing stonewalls in the right-of-way and replace them with a 3-ft. high single stonewall to run the entire length of the property line and around the corner. Deschenes outlined the architecture of the buildings. Deschenes stated that the septic designs are nearing completion and will be submitted soon. The engineering has been submitted to the Town.

### ***Board Questions and Comments – Concord Place, LLC***

Herrmann asked Deschenes what the applicant planned to do with the area between the existing stonewall and the proposed stonewall. Deschenes stated that the applicant plans to landscape the area out flat and reseed it. Deschenes noted that the landscaping would make it easier to work on the Elliot Road intersection or shoulder if necessary. Herrmann was concerned with the view from Concord Road if the site is built up by an additional three feet.

Hall asked how many affordable units were proposed with the new plans. Deschenes stated that there will be three (3) affordable units.

Johnson requested that the applicant provide the Board with a locus plan showing the location of the abutters and the lot lines. Johnson asked how much flexibility the applicant had with respect to the location of the three structures to bring them back into compliance with the setbacks. Deschenes stated that the limiting factor of the entire site layout is the well and the septic. Deschenes stated that if the buildings are pulled in too close they lose the turning radius and the parking. Deschenes outlined the setbacks of the three buildings.

Kazeniac questioned if six parking spaces would be adequate for visitor parking. Deschenes stated that the plans are in excess of the Zoning Bylaw relative to parking.

Frank felt that the lofts in the buildings raise the question of more children and school impacts. Frank asked if the buildings could be constructed without the lofts while maintaining the proper angle of the roofs. Deschenes stated that the buildings were designed with a marketing sales consideration. Deschenes stated that the market analysis prepared by the applicant included the lofts. Deschenes stated that while the buildings could be redesigned, it would have a significant impact economically on the project. Deschenes stated that they are

trying to balance reducing the project scope, redesigning the buildings, etc., against the expectations of marketing and sales. Deschenes stated that the buildings are exceeding the 35 feet height by approximately 2 feet. Frank asked for an isometric plan showing the relative scale of the buildings as well as reduced plans. Frank reported that a resident approached him recently stating that he was an abutter with well concerns. Frank asked the applicant in due diligence to check all the abutters that could impact the project and make sure there are no additional wells. Frank asked if the new plans had been filed with the State. Deschenes indicated that the plans do not need to be filed with the State because all the applicant has done is reduce the number of buildings. Frank

asked that the applicant provide the revised pro forma based upon 10 units to the Board. Deschenes stated that he would provide the pro forma as soon as possible. Frank asked how much paving would be reduced if visitor parking was eliminated. Deschenes stated that 1,100 sq. ft. of paving would be reduced. Frank suggested that the Board think about encouraging visitor parking as an amenity or discourage visitor parking in the interest of open space and less paving. Frank stated that all of these sites are going to be compressed in some sense and those are two competing design characteristics. Earl was concerned with visitors parking on Elliot Road.

Herrmann recommended fencing and landscaping on the northeast side of the site. Herrmann was concerned with the height of the front building and asked that the building be reduced. Deschenes stated that the 37 feet is measured from the back pavement to the top ridge of the building. Deschenes stated that he will determine the official height of the buildings under the Zoning Bylaw for the waiver list. Frank read the regulations determining the height of buildings.

Frank asked Doucette how the Board could ask for a more substantive analysis of the question concerning the lofts. Doucette stated that assuming a permit is granted a condition could limit it to two (2) bedrooms and no additional bedrooms be added. Doucette suggested that the Board ask the applicant for the marketing research data. Frank stated that the Board appreciates that there are now ten units. Frank was concerned with the height of the buildings and asked the applicant to show data indicating economic impacts by eliminating the lofts as well as the reduction in height of the buildings. Doucette recommended that the Board ask the Building Commissioner to calculate data relative to the height of the buildings. Deschenes stated that the applicant would be willing to make the 2 bedrooms a condition of the condominium association bylaws. The applicant stated that the loft is designed as an in-home office.

### ***Public Questions and Comments – Concord Place, LLC***

Allan Hicks, 130 Concord Road, stated that he recently raised the issue of the number of people using the septic system. Hicks questioned whether the septic design was robust enough to handle the expected flow of the units if they

were used as 3 bedroom units as opposed to 2 bedroom units. Deschenes stated that the septic design is currently being completed for submittal. The septic system is designed at 110 gallons per day.

Gordon Stevenson, 134 Concord Road, asked when the septic plan would be submitted. Deschenes expected the plan to be ready at any time and it will be submitted to the Town immediately. Stevenson asked if the profit margin would be the same with 6 market rate units and 2 affordable units for a total of 8 units. Deschenes could not answer that question at this time. Herrmann asked the applicant to provide data regarding Stevenson's question regarding a reduction to 8 units. Johnson asked if there were any considerations in making the units rental so that all of the units could count toward the affordable housing stock. Deschenes stated that when a project gets down to ten units the numbers do not work. Stevenson stated that his neighbor, Patricia Montminy, is out of town and asked that Stevenson provide a statement of concerns to the Board.

Paul Berry, 138 Concord Road, asked for the location of snow storage. Deschenes pointed out various locations for snow storage.

Dennis Galvin, Concord Road, stated that there are concerns regarding the proximity of the buildings to an abutting residence, the septic system and the wells. Galvin felt that when those issues are alleviated the neighbors might like the plans more.

***Items Read Into the Record – Concord Place, LLC***

Frank summarized a letter from Patricia Montminy, 135 Concord Road, which raised questions regarding soil absorption because of the density of the project; the need for a hydrogeological study; the proximity of the buildings to her property line; noise, light and privacy impacts; the decks overlook the bedrooms in her home; safety issues relative to accessibility for fire and police; and impacts to her well. Frank asked if the applicant addressed accessibility to the buildings. Deschenes stated that the applicant is waiting for comments from the Police and Fire Departments.

***Request \$10,000 Escrow for Peer Review – Concord Place, LLC***

Frank suggested establishing a \$10,000 escrow for peer review to cover the architecture, septic and engineering. Deschenes agreed with establishing the escrow.

***Continue Public Hearing – Concord Place, LLC***

It was moved by Herrmann, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Enis), to continue the public hearing to September 17, 2003.

**COMPREHENSIVE PERMIT – 99 MAIN STREET – ROSEGATE AT WESTFORD – Continued from July 24, 2003 Meeting**

***Review Input from Board of Health, Conservation Commission, Planning Board, Board of Selectmen, and Highway Department***

***Conservation Commission*** - Frank read into the record a memo from Eric Fahle, Chairman of the Conservation Commission, dated August 8, 2003, outlining concerns regarding the potential of the proposed septic system to alter a State certified vernal pool located within 60 feet of said system; the Town's consultant will discuss the Commission's concerns at its August 13<sup>th</sup> meeting. The Commission would not recommend waiving the requirements of the local wetlands bylaw and regulations. Attorney Douglas Deschenes updated the Board on the August 13<sup>th</sup> Conservation Commission meeting. Deschenes reported that the Town's consultant addressed the impact of the septic system on the vernal pool and other issues. Deschenes stated that the three monitoring wells have determined that the subsurface water flow direction was from the vernal pool in the north through Main Street under the site and down to the wetlands behind the site. Deschenes stated that it was conclusive that the groundwater flow was away from the vernal pool. Deschenes stated that the Conservation Commission and Board of Health both had questions regarding the 55-gallon drum which was removed from a shed on the site. Deschenes stated that he has agreed to

provide a report to those Boards and the Zoning Board on the status of the drum including the names of the disposal companies and the contract information with Clean Harbors. Deschenes reported that the 55-gallon drum was tested and found to be antifreeze. It was taken off site in the barrel, disposed of at a waste recycling site and picked up by Clean Harbors. Frank asked Burke to obtain Conservation Commission minutes or documentation relative to their latest meeting. Burke confirmed that the Conservation Commission has continued the public hearing for five weeks until they see what the Zoning Board is going to do with the waiver requests. Johnson noted that the Zoning Board asked the other Town boards to provide comments regarding the requested waivers and if they did not respond to the request the Zoning Board would assume that they did not have any comments. Earl asked Doucette if the Zoning Board could accept Deschenes' notes from the Conservation Commission hearing. Doucette suggested that before the Board decides on that question additional information may be supplied by those members of the audience who attended the Conservation hearing. Frank suggested keeping the public hearing open in order to get remaining input from the Town boards. Deschenes stated that the Town's consultant did not submit a report to the Conservation Commission.

### ***Audience Comments – Rosegate at Westford***

Dennis Keris, 100 Main Street, provided his recollection of the Conservation Commission meeting of August 13<sup>th</sup>. Keris believed that the engineering discussion related to a marginal flow of water. Keris stated that they used 2.1 versus .44 and talked in terms of inches versus the vernal pool and the height of the water at 99 Main Street. Keris recalled that the engineers said that the water would continuously flow from north to south. Keris stated that he has attended many meetings and that everyone has said there are no guarantees. Keris stated that they are talking about a flow of water that only has a couple of inches of margin from a State certified vernal pool to water that is going to be generated on a piece of property that is probably going to receive a lot of water in time to come. Keris stated that they are talking inches not substantial flow away from the vernal pool but a matter of inches. Keris asked the Board to think about inches and construction of any kind of system and engineering and the margin of error. Keris asked what happens when something changes in the system or some other unknown force of nature that moves that water elsewhere. Keris acknowledged that the applicant would be installing a barrier but noted that water can find a way around a barrier in either direction. Keris asked if the water would go under the barrier and stated that the engineers said it will not because of pressure, etc. Keris stated that when that ground freezes and there is rain and snow, there are changes. Keris pointed out that the water is measured at certain times that are preferable and using numbers and accounting systems mathematically that make things work but what happens when and if.

Sandy Martinez, 95 Main Street, stated that the issue of the 55-gallon drum was also discussed at the Conservation meeting. Martinez stated that the issue was brought up

two weeks ago and that there is difficulty getting paperwork. Martinez stated that there was also an issue of testing a substance that was around the shed and a request was put in by the Conservation Commission. Martinez noted that the testing was not mentioned. Burke stated that soil contamination testing will be a condition of the Order of Conditions from the Conservation Commission. Johnson reported that he spoke to Bill Turner and was told that he was not aware of any black substance on the ground but was aware of the missing barrel and had been in contact with Deschenes regarding the associated paperwork. Johnson further reported that Turner said that if the paperwork was not provided the Commission would not issue an Order of Conditions.

Tony Martinez, 95 Main Street, referenced an e-mail from the Interim Director of Environmental Services to the Assistant Town Manager which stated that the applicant comply with all State and Federal regulations. Martinez asked if the Board had reviewed the e-mail. Frank indicated that the Board has not received a copy of the e-mail. Burke to provide a copy of the e-mail to the Board. Martinez was concerned that the water will flow downhill across Main Street and into the vernal pool. Frank stated that the Board has had an engineering

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review of the stormwater management that has shown to the satisfaction of the Board's consultant that the stormwater sitting on the property will be disposed of properly and not only discharged to the stream but cleaned up in the process. Frank noted that there are improvements being made to the street in cooperation with the Town to catch some of that water and process it properly.

**Board of Health** – Frank read a memo from Darren MacCaughey, Interim Director of Environmental Services, dated August 14, 2003, regarding the update on the status of the Board's recommendations regarding the waivers requested from Local Board of Health regulations. The Board of Health granted the waiver request for a variance from 150 gpd to 110 gpd per bedroom design; the Board of Health granted the waiver request for a variance for the distance of the soil absorption system to a wetland; and the Board of Health granted the waiver request for a variance requiring environmental or hydrogeological studies. Frank reported that the Board of Health will review the enviro-screen when provided and then make a decision whether additional investigation should be required.

**Board of Selectmen** – Frank read a memo from the Town Manager dated August 14, 2003. The memo stated that the Selectmen strongly recommended that the ZBA not waive the development scheduling, which is part of the Growth Management Bylaw, and waive permits under the Growth Management Bylaw for the market rate units only in numbers necessary to facilitate development scheduling. The Board of Selectmen does not support the waiving of building permits fees or other fees associated with this project. Frank addressed the Growth Management Bylaw. Frank stated that the only waiver that can be discussed is relative to the market rate units.

**Planning Board** – Frank read a memo from the Town Planner dated August 14, 2003. The Planning Board recommended denying the request for the waiver of Section 5.1.7 Landscaping in Parking Areas. The request for a waiver from the Growth Management Bylaw is not relevant to units designated as affordable. Up to six of the remaining units could potentially be developed in a calendar year under the Growth Management Bylaw.

This would mean that up to three units could not be built until the start of the next calendar year. As this project consists of a single structure containing twelve units there should be compensatory measures investigated to alleviate the impact of the additional growth on the Town's services, infrastructure and character from the granting of this waiver. The Planning Board also recommended denial of the request for a waiver from fees. The Planning Board recommended approval of the waiver request from Site Plan Review as the Zoning Board is effectively performing this function through Chapter 40B.

**Highway Department** – Johnson reported on his conversation with the Highway Superintendent regarding the impact of large vehicles on Main Street. Johnson was informed that Main Street was designed to handle tractor trailers and any damage to the road during construction is the responsibility of the developer.

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**Isometric Elevation Drawings** – At the meeting of July 23<sup>rd</sup>, Johnson had requested that the applicant reconsider providing isometric elevation drawings or indicate why providing the drawings is uneconomic. Deschenes stated that he submitted a written response dated July 15, 2003 relating to the outstanding issues. Frank read the letter and noted that the letter does not address the issue of the isometric elevation drawings. Frank further pointed out that the Board has been requesting this information from the beginning so that the Board could see how this project will blend in with the neighborhood. Deschenes stated that at this point the applicant will not provide an isometric drawing. Deschenes stated that the applicant has provided elevation drawings so that the Board could see what the buildings will look like. Deschenes stated that because the applicant is not doing the 150 gallons per day the site will not be raised significantly and therefore the elevation drawings were not economically feasible or justified. Frank stated that the Board asked for these drawings before getting into height considerations relative to the septic. Earl asked Deschenes what the estimated cost would be to provide isometric elevations drawings. Deschenes estimated that a complete set of isometric drawings would cost \$10,000 - \$15,000. Deschenes stated that he could not recall a project in Westford where those types of drawings were required. Deschenes felt that the request goes far beyond the norm.

**Enviro-Screen Issue** – Deschenes reported that the Board of Health will not be requiring any environmental studies as outlined in the Board of Health letter to the Zoning Board.

**Bonding** – At the meeting of July 23<sup>rd</sup> the Board discussed the posting of a \$500,000 bond pursuant to the suggestion of Sandra Martinez of 95 Main Street. Doucette reported that Elaine Lucas, Town Counsel, answered that question at the meeting. Lucas had stated that the Board cannot impose conditions on an affordable housing development that would not ordinarily be imposed on similar developments that are not affordable. Doucette agreed with Lucas' statement. Doucette stated that the issue of bonding is a condition that can be deliberated on with respect to a decision. Tony Martinez, 95 Main Street, referenced the minutes of June 17, 2003, relative to a statement made by Attorney Mark Bobrowski regarding bonding. Doucette disagreed with Bobrowski's statement regarding bonding. Doucette suggested that the Board ask Bobrowski to clarify his statement. Deschenes clarified that Bobrowski said that there are some things that can be bonded. Deschenes stated that when constructing Chapter 40B projects in other towns, the towns have asked them to bond the roadways as they would any roadway project. Deschenes believed that Town Counsel had responded to

the question of whether the Board could ask the developer to bond for potential impacts and personal injury to neighbors and the response was that the Board cannot ask for bonding that the Board would not normally do. Deschenes stated that if the developer were building a roadway the Board would be well within its authority to ask for a bond.

***Letter from Anthony and Sandra Martinez, 95 Main Street, dated August 20, 2003*** – Frank read the letter into the record.

***Public Questions and Comments – Rosegate at Westford***

A resident from 134 Concord Road asked if anyone had addressed the impact of the 1929 NGV datum for septic calculations. Frank stated that the Board of Health said they were happy to not enforce it. Johnson stated that it was discussed among the engineers and it was not an issue with the Town's engineers or the developer's engineers.

Dennis Keris, 100 Main Street, stated that when this project was initiated he was under the assumption it was a 12-unit, 26-bedroom development, and he recently read in the plans at Town Hall that it is a 27-bedroom development. Keris asked when the number of bedrooms had changed. Deschenes stated that the plans call for 26 bedrooms but the septic design says 27 bedrooms. Frank asked how many 3-bedroom units were proposed. Frank stated that the pro forma was based upon 2 3-bedroom units. Deschenes stated that units 3 and 11 are 3-bedrooms, one of which is affordable.

Tony Martinez, 95 Main Street, was concerned with the issue of 6.5 inches of rain in a 24-hour period for a 100-year storm. Martinez stated that hurricanes do occur in New England more than once in a 100-year period. Frank reiterated that the Town's engineers have no issues with the septic and stormwater management plans.

Anthony Jorge, 102 Main Street, stated that if the project was reduced in size a lot of these problems will go away. Jorge stated that issues of soil testing were raised at the Conservation hearing, and no environmental studies have been done. Jorge felt that there was no need to rush to make a decision to close the public hearing.

Sandra Martinez, 95 Main Street, referenced the prior public hearing for Concord Place and noted that the developer was willing to work with the Town and the abutters. Martinez felt that anything the Board or abutters asked the applicant for was denied. Martinez asked the Board to remember that when thinking as far as how things are going to go along when this gets built. Martinez stated that this is the Board's Town and their neighborhood and the Town and neighbors are going to have to deal with it. Martinez asked the Board to remember the lack of give and take. Frank stated that the Board is going to do what is right for the Town and part of that is what is right for the neighborhood. Frank noted that if the Board decides to approve the project, appropriate conditions will be placed on the approval.

***Peer Review Outstanding Balance*** – Burke reported that there is an outstanding balance for peer review fees. Burke stated that unless the Board gets concrete proof of payment, she did not recommend closing the public hearing tonight.

Robert Walker, developer, stated that he would like to set up a meeting with Burke on Thursday, August 21, 2003 as he had issues with some of the invoices. Deschenes asked that Howe Surveying provide data to substantiate their final review cost of \$6,000. Burke will contact Howe Surveying for additional data. Deschenes agreed to work with Staff to resolve this issue. Frank stated that if there is a short-fall in the payment, the Board can make a condition that the short-fall be resolved.

***Spreadsheet*** – Frank read into the record a revised spreadsheet which was provided to Julie O'Connor who had reviewed the pro forma. O'Connor calculated the profit to be 4.1% rather than 10% as previously stated.

Dennis Keris, 100 Main Street, asked that the Board put in a lot of time and energy into deliberations. Keris also asked the Board to consider the following numbers into the deliberations: a property with 1.4 acres of land; on that 1.4 acres will be 12 homes; there will be 36 flushing toilets, 48 sinks, 12 dish-washers, 12 washing machines, 24+ people, number of children unknown (probably 2 or more or up to 5 or 6); and at least 12 up to 24 automobiles. Keris stated that those were interesting numbers for a piece of property that probably in this day and age would hold one home, with 4 bedrooms, 2½ bathrooms, 2 car garage, for a married couple with 2 children.

### **CLOSE PUBLIC HEARING**

It was moved by Johnson, seconded by Hall, and VOTED 6 IN FAVOR WITH 1 ABSENT (Enis), to close the public hearing.

### **SET SCHEDULE FOR DELIBERATION AND DECISION**

The Board reviewed the schedule for deliberation and decision. Frank stated that the meeting results will be e-mailed to Attorney Bobrowski on Thursday, August 21, 2003 and direction will be given to him to draft two comprehensive permits: one a denial and one an approval with all the conditions that he feels are appropriate. Frank stated that he was informed by Bobrowski that every waiver request must be addressed in the decision. Doucette stated that the Board will review a first draft provided by Bobrowski and provide him with any recommendations. It was moved by Herrmann, seconded by Hall, and VOTED 6 IN FAVOR WITH 1 ABSENT (Enis), to schedule a meeting for Tuesday, September 2, 2003 at 7:00 p.m.

### **ADJOURNMENT**

It was moved by Herrmann, seconded by Johnson, and VOTED 6 IN FAVOR WITH 1 ABSENT (Enis), to adjourn the meeting.

